

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JOHN A. COFFEE**

Claimant

VS.

**BUILDERS SQUARE, INC.**

Respondent

Self-Insured

)  
)  
)  
)  
)  
)

Docket No. 173,010

**ORDER**

Claimant requested review of the Award entered by Special Administrative Law Judge William F. Morrissey dated October 31, 1994. The Appeals Board heard oral argument on July 6, 1995, in Wichita, Kansas.

**APPEARANCES**

Claimant appeared by his attorney, Alice K. MacBeth of Wichita, Kansas. The respondent appeared by its attorney, Larry Shoaf of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

The Special Administrative Law Judge found that claimant failed to prove that he injured his left shoulder while working for the respondent in November 1992 as alleged. Claimant requested review of that finding. The only issue before the Appeals Board on this review is whether claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds:

The Award entered by the Special Administrative Law Judge should be affirmed.

The Appeals Board agrees with the Special Administrative Law Judge's analysis and conclusion that claimant has failed to prove he injured his left shoulder while working for the respondent in November 1992 as alleged.

The Appeals Board finds several instances where claimant's testimony is inconsistent with that of other witnesses. One critical instance is claimant's description of the November 1992 accident compared to that of Dr. Lesko, the physician claimant began consulting in March 1993. At preliminary hearing, claimant testified that his left shoulder symptoms began one or two days after he had picked up some insulation. However, Dr. Lesko described a different mechanism of injury and time of onset of symptoms. Dr. Lesko testified that claimant's left shoulder discomfort began in November 1992 when he reached upward to catch some insulation that was falling. Other inconsistencies exist regarding the statements claimant allegedly made to others regarding his alleged injury. Further, claimant did not notify respondent of an alleged work related accident until after he was terminated for reasons unrelated to the alleged accident, although he had ample opportunity to do so.

Because of the numerous inconsistencies between claimant's testimony and that of his coworkers coupled with the fact that claimant did not report a work-related accident until after he was fired, the Appeals Board finds claimant's testimony and allegations to be unpersuasive.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge William F. Morrissey dated October 31, 1994, should be, and hereby is, affirmed.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1996.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Alice K. MacBeth, Wichita, KS  
Larry Shoaf, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director